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April 10, 2006

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APR 10 2006

Federal Communications Commission
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Via Courier

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Ms. Dortch:

Enclosed on behalf of IDT Corporation ("IDT") are an original and four copies of IDT's Request for Review of Decision of the Universal Service Administrator. Pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459, IDT requests confidential treatment of the information contained in Exhibit 1. For your convenience, we have separated Exhibit 1 from the original and four copies of the Request for Review and placed this exhibit with IDT's Request to Withhold from Public Inspection.

If you have questions concerning this submission, please contact me.

Sincerely,



Scott D. Woods

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 10 2006

Federal Communications Commission
Office of Secretary

In the Matter of)

Request for Review of Decision of the)
Universal Service Administrator by)

IDT Corporation)

USAC Audit Report No. CR2005CP005

CC Docket No. 96-45

REQUEST FOR REVIEW OF DECISION
OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
IDT CORPORATION

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Dated: April 10, 2006

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SUMMARY

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the rules of the Federal Communications Commission ("FCC" or "Commission"), IDT Corporation ("IDT"), hereby respectfully requests that the Commission reverse and remand certain decisions of the Universal Service Administrative Company's ("USAC") Audit Report regarding IDT's Contributor Revenue Compliance for FCC Form 499-A for the filing years 2003, 2004 and 2005.

Specifically, IDT is appealing USAC's Audit Report findings and recommendations regarding: (1) IDT's reporting of wholesale calling card revenue, and (2) the reporting of carrier's carrier revenue. As described in more detail below, IDT argues that the instructions to Form 499-A, under which USAC based its findings and recommendations in the Audit Report, are plainly invalid because they created a substantive change in the Commission's governing USF regulations without the requisite opportunity for public notice and comment as required by the Administrative Procedure Act. In addition, the Form 499-A instructions directly conflict with the Commission's USF regulations regarding the contribution of USF on only end user telecommunications revenues. In contrast to the instructions to FCC Form 499-A regarding the definition of end user telecommunications revenue, the Commission's regulations support IDT's argument that revenues from the sale of prepaid calling cards to distributors and other wholesalers are not end user revenues and should not be included in the base used to compute universal service contributions.

Based upon the foregoing, and as is described herein, IDT respectfully requests that the Commission: (1) reverse USAC's findings 1 and 5 of the USAC Audit Report regarding IDT's wholesale prepaid calling card revenue and carrier's carrier revenue; (2) reject USAC's decision to base IDT's USF contributions based on revenues to non-end user distributors and retailers; and (3) reject USAC's recommendation that IDT re-file its 2003, 2004, and 2005 Form 499-A.

TABLE OF CONTENTS

SUMMARY.....	i
TABLE OF CONTENTS.....	ii
I. INTRODUCTION AND SUMMARY	1
II. BACKGROUND	3
A. Factual Background	3
B. Legal Background.....	6
III. ARGUMENT.....	8
A. USAC's Attempt to Assess USF Contributions on the Basis of Wholesale Revenue Violates the Administrative Procedure Act Because the Form 499-A's Instructions Were Not Promulgated With Proper Notice and Comment.....	8
B. Even if the Instructions to Form 499-A are Deemed Interpretative Rules and Thus Immune from the APA's Notice and Comment Requirements, the Instructions are Still Invalid Because They Conflict with the Commission's USF Regulations That Impose USF Contributions Only On End User Revenues.	11
IV. CONCLUSION.....	14
Exhibit 1	

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Request for Review of Decision of the)	USAC Audit Report No. CR2005CP005
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**REQUEST FOR REVIEW OF DECISION
OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
IDT CORPORATION**

I. INTRODUCTION AND SUMMARY

On February 10, 2006, the Universal Service Administrative Company ("USAC") notified IDT Corporation ("IDT" or "Company") that it had issued an Audit Report from USAC's Internal Audit Division, USAC Audit Report No. CR2005CP005 ("USAC Audit Report").¹ Throughout USAC's audit process, IDT has maintained that it reported its telecommunications revenues in accordance with the Federal Communications Commission ("FCC" or "Commission") Regulations and the underlying Orders related to the Universal Service Fund ("USF").

Pursuant to Section 54.719 of the rules of the Commission, IDT respectfully requests that the Commission reverse certain parts of the USAC Audit Report regarding IDT's Contributor Revenue Compliance.² Specifically, IDT is appealing USAC's Audit Report findings and

¹ See Exhibit 1 (USAC Audit Report). Please note that as this report is proprietary and confidential, it has been filed as a confidential exhibit, along with a concurrent request to withhold the report from public inspection in accordance with 47 C.F.R. § 0.459.

² 47 C.F.R. § 54.719.

recommendations regarding: (1) IDT's reporting of wholesale calling card revenue;³ and (2) the reporting of carrier's carrier revenue.⁴ In addition, IDT objects to USAC's finding that IDT should re-file its Form 499-A for filing years 2003, 2004 and 2005.⁵

IDT strongly believes that the instructions to the Form 499-A regarding the calculation of end user telecommunications revenue are contrary to the Commission's binding regulations and are thus unenforceable. As such, IDT reports its revenue in accordance with the FCC's Orders and regulations, rather than the contradictory and invalid Form 499-A instructions. The instructions, which were promulgated subsequent to the creation of the Commission's underlying regulations, are plainly invalid because they created a substantive change in the underlying FCC regulations without the requisite opportunity for notice and comment as required by the Administrative Procedure Act ("APA").⁶ Moreover, if the instructions are deemed not to be subject to the APA's notice and comment requirements, the instructions directly conflict with the Commission's USF regulations regarding the contribution of USF on only end user telecommunications revenues. As a result, the instructions are invalid and may not be used to substantively alter IDT's USF obligations. Furthermore, IDT objects to USAC's recommendation that IDT is required to re-file its Form 499-A. Since IDT disagrees with USAC's findings and has filed an appeal, IDT has reserved its right not to re-file the Form 499-

³ See USAC Audit Report, Finding Number 1 at 6.

⁴ See USAC Audit Report, Finding Number 5 at 24.

⁵ See USAC Audit Report, Finding Number 9 at page 34. Note that filing years 2003, 2004 and 2005 report calendar year revenue for 2002, 2003 and 2004, respectively. In addition, USAC's Billing and Collection Department sent a letter decision dated March 2, 2006, stating that USAC will "prepare and file" a Form 499-A for IDT based on the Audit Report within 30 days of the letter. As this date pre-dated the time for filing this appeal of the underlying Audit Report, IDT separately appealed this letter to USAC's Board of Directors, based on the inappropriate shortening of time and the lack of finality of the underlying Audit Report. By this appeal, IDT contests the requirement in the underlying audit report that the Company re-file the Forms 499-A for the audit years.

⁶ 5 U.S.C. § 551, *et seq.*

A. Otherwise, IDT would be submitting a Form 499-A which the Company does not believe is completed in accordance with the Commission's regulations, and would lead to an inaccurate and unlawful assessment of USF on IDT.

IDT submits the following information in support for its Request for Review.

II. BACKGROUND

A. Factual Background

IDT is a multinational telecommunications company that operates as a facilities-based and resold common carrier both domestically and internationally. The telecommunications services provided by IDT include prepaid calling cards, local and long-distance residential services, prepaid wireless and wholesale carrier services. IDT is headquartered in Newark, New Jersey and is publicly-traded on the New York Stock Exchange under the ticker symbol "IDT". IDT's calling card products are sold primarily to low-income immigrant populations for international calling.

In March 2005, USAC notified IDT of its intention to commence an audit for the 2005 Form 499-A filing year. Subsequently, USAC expanded this audit to include filing years 2003 and 2004.⁷ The auditors issued a draft report on September 10, 2005, and a revised draft report on November 21, 2005. IDT responded to the original draft report on September 16, 2005, and the revised draft audit report on January 6, 2006. Based on information and belief, the revised draft audit report was approved by the USAC Board of Directors at its January 2006 meeting,

⁷ In addition, USAC also expanded the audit to include IDT prepaid calling card revenue only for filing years 2000 and 2001. As the partial audit of these two years does not result in additional liability or a requirement to re-file a Form 499, IDT does not specifically appeal the findings regarding these two years. However, to the extent that these findings in that portion of the USAC Audit Report rely on the same logic as the other filing years, IDT objects to these audit findings as well.

and IDT was formally notified of the decision when USAC provided IDT a copy of the final Audit Report on February 10, 2006.⁸

The USAC Audit Report contains nine separate findings, each discussing a specific IDT product or service or line item from the Form 499-A. While most of these findings are reasonable, and generally validate IDT's reporting of its revenue on the Form 499-A,⁹ several are incorrect, unlawful, or both. Specifically, IDT objects to the findings regarding IDT's reporting of prepaid calling cards and IDT's carrier's carrier revenue. In both of these instances, USAC erred significantly in its conclusions regarding the reporting of revenue by IDT for USF contribution purposes by attempting to reclassify wholesale revenue as end user revenue. IDT believes that both products do not constitute sales to "end users" that are subject to USF under the Commission's legally-enforceable regulations.

In addition, IDT reported certain of its calling card revenue as an enhanced service, based on the information services available for use on these cards.¹⁰ USAC's auditors moved much of this revenue from the Form 499-A line for the reporting of enhanced services to the line for reporting prepaid telecommunications services. This action by USAC was not warranted by the FCC's existing precedent regarding the appropriate treatment of such prepaid calling cards, and is, in fact, the subject of an ongoing Commission rulemaking.¹¹ As the Commission has not yet completed this rulemaking, IDT also notes that it continues to reserve the right to address the

⁸ Letter from Caroline Ashe-Donnem, Senior Internal Auditor, USAC to Michael Levine, Senior Vice President, IDT. This letter serves as the formal notification of USAC's audit decision, February 10, 2006.

⁹ The final conclusion of the USAC Audit Report was that IDT owed additional USF contribution of approximately six million dollars, in the aggregate, for the three filing years 2003-2005, inclusive.

¹⁰ USAC Audit Report, at 4, 10-11.

¹¹ *In the Matter of the Regulation of Prepaid Calling Card Services*, WC 05-68.

proper classification of these prepaid calling cards, if and when the Commission issues a definitive ruling in the above-referenced docket.

IDT sells a variety of prepaid calling cards. The vast majority of these sales are done through a network of distributors and resellers before being purchased by the ultimate end user consumer. Typically, the card is sold by IDT to a distributor for a wholesale price (*i.e.*, a price less than that listed on the face of the card). That distributor, in turn, may sell the card to one or more "sub-distributors" before ultimately selling the cards to a retail store, typically an independent ethnic market, but also to large drug stores and supermarkets. These stores ultimately set the price of the cards (which are often, but not always, at the stated face value¹² of the card) and sell the cards to the public.

IDT's carrier's carrier service is actually two distinct products. The first is wholesale switched minutes product whereby carriers can purchase minutes on a country-by-country basis. Smaller, domestically-based resellers who lack their own direct connections to certain countries and international carriers who desire least cost routing through the U.S. may purchase these minutes to facilitate the calling placed by their customers. In addition, minutes for domestic termination of international calls (typically, a settlement-like arrangement) are purchased by foreign carriers wishing to terminate traffic in the U.S. The second product is wholesale dedicated capacity. This service is typically purchased by domestic or foreign carriers who have their own switching equipment but need simple capacity to transmit calls or other telecommunications placed by their customers.

¹² IDT also sells a limited number of minute-denominated cards. Whether the cards are minute-denominated or have a stated face value does not alter the analysis of the treatment of the sale of these cards to distributors.

B. Legal Background

In its *First Report and Order*, the Commission adopted specific regulations regarding the assessment of, and contribution to, the USF.¹³ In the *First Report and Order*, the Commission ruled that a USF surcharge shall be assessed on end user telecommunications revenues only.¹⁴ The Commission concluded that:

[USF] contributions will be based on revenues derived from end users for telecommunications and telecommunications service, or “retail revenues”...End user revenues would also include revenues derived from other carriers *when such carriers utilize telecommunications services for their own internal uses* because such carriers would be end users for those services. This methodology is both competitively neutral and relatively easy to administer.¹⁵

The Commission also noted that “[b]asing contributions on end user telecommunications revenues eliminates this potential economic distortion because contributions will be assessed at the end user level, not at the wholesale and end user level... regardless of how the services are provided, their contributions will be assessed only on revenue derived from end users.”¹⁶ Similarly, the Commission’s USF regulations clearly provide that “every telecommunications carrier that provides interstate telecommunications services...shall contribute” to USF on the basis of its “interstate and international *end user* telecommunications revenues.”¹⁷

Nowhere in the regulations that govern universal service or in the underlying order is the term “end user” defined.¹⁸ As a result, term “end user” should be afforded its ordinary and

¹³ See In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997) (“*First Report and Order*”).

¹⁴ *Id.* at ¶ 843.

¹⁵ *Id.* at ¶ 844 (emphasis added).

¹⁶ *Id.* at ¶ 850.

¹⁷ 47 C.F.R. § 54.706(a) (emphasis added).

¹⁸ See 47 C.F.R. § 54.1 *et seq.*

customary meaning. Newton's *Telecom Dictionary* defines end user as "[a]ny individual, association, corporation, government agency, or entity other than an IXC that subscribes to interstate service provided by an Exchange Carrier and does not resell it to others."¹⁹ Such a definition is also consistent with the common understanding of an end user in ordinary parlance.

Furthermore, the Commission has specifically identified the limited examples where sales of telecommunications services to non-end users would be included in the universal service support contribution base, even though these sales are not sales to end users.²⁰ Such reseller revenues that are treated as end user revenues include revenues from (i) sales to resellers that claim exemption from universal service contribution requirements under the *de minimus* exception, (ii) sales to system integrators that receive less than five percent of their revenue from telecommunications, and (iii) sales to broadcasters.²¹ These specific examples are identified in the underlying *First Report and Order*, and are mirrored in the Form 499-A instructions.²² By contrast, the reporting of sales to calling card distributors is not identified as such an exception either in the rules or the *First Report and Order*. Thus, sales of prepaid calling cards should only be treated as "end user" sales only when they are truly sales to "end users" under the ordinary and customary meaning.

Yet, in the 2000 version of FCC Form 499-A, there is a specific line for prepaid calling card revenue that includes "card sales to customers and non-carrier distributors."²³ The

¹⁹ Newton's *Telecom Dictionary* (20th Ed.) at 301.

²⁰ See *First Report and Order* at ¶¶ 281, 284, 298.

²¹ *Id.*

²² Form 499-A, Instructions at 16. The original reporting form, the Form 457, also included this language.

²³ FCC Form 499-A at line 411 (Feb. 2000). By contrast, the original Form 457 which was attached to the *First Report and Order*, did not include this language, rather, it only included a statement that calling card sales should include sales to users or retail establishments.

instructions for this line provide that such revenue includes "revenues from pre-paid calling cards provided either to customers or to retail establishments" and that "[a]ll prepaid card revenues are classified as end user revenues."²⁴ The treatment of the sale of a calling card to distributors or retail sales outlets thus became, for the first time with the creation of the reporting Forms (either the original Form 457 or the Form 499-A), synonymous with the sale of a card to a consumer who actually uses the telecommunications service.

III. ARGUMENT

A. **USAC's Attempt to Assess USF Contributions on the Basis of Wholesale Revenue Violates the Administrative Procedure Act Because the Form 499-A's Instructions Were Not Promulgated With Proper Notice and Comment.**

The instructions to the Form 499-A, originally included as an attachment to a Commission Order²⁵ differ so significantly from the Commission's underlying precedent and rules that it constitutes a separate substantive ruling distinct from the *First Report and Order*. Since the instructions implement, interpret, and prescribe the Commission's policy with respect to the definition of end user revenue and also set forth the rights, duties, and obligations of contributors to the universal service support mechanisms, these instructions operate as a substantive rule under the APA.²⁶ Indeed, during the audit and in the USAC Audit Report, the auditors refer primarily to the instructions on the Form as the basis for their decisions during the audit.²⁷ Such reliance indicates that USAC uses these instructions as substantive rules rather than as merely interpretative clarifications of the Commission's regulations.

²⁴ Instructions to FCC Form 499-A at 17 (Feb. 2000).

²⁵ See Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, 12 FCC Red. 18400, 18498 (1997) ("*NECA Order*"). The original instructions were attached as Appendix A to the *NECA Order*.

²⁶ See 5 U.S.C. §§ 551(4), 552(a)(1)(D); *GMC v. Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984).

²⁷ See, e.g., USAC Audit Report, at 12.

As a result, the Commission was required to provide appropriate notice to the public and afford any interested persons an opportunity to comment before the instructions were promulgated.²⁸ By merely releasing the Form 499-A without going through the rigors of the APA, the Commission failed to put all aggrieved parties on reasonable notice of the instructions' content. Rather, the Commission merely attached the original draft of the instructions to a legally and conceptually distinct rulemaking proposal without any substantive discussion of the instructions and without inviting public comment on the instructions.²⁹ For the instructions to be valid and binding upon contributors to USF, they must have been subject to the notice and comment procedures as set forth in the APA. Plainly put, the instructions were never subjected to the required procedures.

After publication of these instructions without the appropriate notice and comment, the Commission further declined to address the responsive comments in later proceedings.³⁰ The Commission has stated its broad application of the term end user in a report to the Congress on the state of universal service support implementation.³¹ In the report, the Commission indicated that it includes telecommunications revenues in the universal service support mechanisms contribution base, "unless the associated services are provided to an entity that incorporates them into services that should generate their own universal service contributions."³² The Commission

²⁸ 5 U.S.C. § 553 (b)-(c). It should be noted that the only opportunity to comment ever provided on the instructions was for the limited purpose of addressing the Form's compliance with the Paperwork Reduction Act. See *NECA Order*, Appendix A at 18498.

²⁹ See *NECA Order* at ¶ 80.

³⁰ In re 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 14 FCC Rcd. 16602 (1999) at ¶26. ("July 1999 Order").

³¹ In re Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45, (Apr. 10, 1998).

³² *Id.* at n.133

has acknowledged the fact that it failed to raise the end user/reseller issue in the underlying Notice of Proposed Rulemaking.³³

It is axiomatic that federal regulations cannot be changed without the proper notice and comment required under the APA.³⁴ The absence of the appropriate notice and comment procedures in this instance renders the instructions to Form 499-A invalid. As discussed above, the Commission established in the *First Report and Order* that only sales to end users would be subject to USF. Yet, when the instructions to the Form 499-A were published, there was a different substantive rule established which is in direct conflict with the governing federal USF regulations. There can be no question that the change in the meaning of the term end user for the purposes of sales of prepaid calling cards substantively altered the way IDT would be required to report its services on the Form 499-A, and consequently, contribute to USF. As such, the instructions are unlawful and unenforceable for want of notice and comment.

It is clear from reading the governing USF regulations (aside from the invalid Form 499-A instructions) that revenue from calling card sales to distributors and resellers is not end user revenue, and thus may not be included in a carrier's USF contribution base. Rather, this revenue is more properly categorized as wholesale revenue and thus should not serve as the basis for USF contribution calculated based on end user revenues. As virtually all of IDT's prepaid calling cards are sold through a distributor rather than directly to the public, IDT's calling card sales are almost exclusively wholesale, not retail, revenue.³⁵ The Commission must therefore reverse USAC's finding in the USAC Audit Report regarding IDT's calling card revenue. As a

³³ See *July 1999 Order* at ¶ 26.

³⁴ 5 U.S.C. § 551-553(c).

³⁵ As noted in the USAC Audit Report, IDT has only limited direct sales of calling cards to end users via the Internet. Only this limited amount of revenue qualifies as true "end user" sales.

consequence, IDT's prepaid calling card revenue should continue to be reported in Line 310 of the Form 499-A, thereby reducing the additional contribution for the filing years 2003, 2004 and 2005.

Similarly, USAC's conclusions with regards to IDT's carrier wholesale business are also flawed. IDT's carrier's carrier revenue includes the sales of either wholesale switched minutes or dedicated circuits. These sales are made exclusively to other carriers, many of them licensed, either domestically or internationally. In the same way that sales to prepaid calling card distributors are not sales to end users, sales to other carriers do not meet the ordinary and common understanding of a sale to an end user. When a reseller purchases either raw minutes on IDT's network or dedicated circuits, the reseller is using that service to provide its own services and to sell them to the ultimate consumer, rather than actually using the services to place or receive calls, transmit data, or otherwise engage in telecommunications. Thus, the attempts to assess USF on IDT's carrier's carrier revenue rely on the same invalid Form 499-A instructions that effectively alter the definition of end user in a material and substantive (and thus unlawful) manner. As a consequence, USAC's finding regarding the reclassification of this carrier's carrier revenue should be reversed for filing years 2003, 2004 and 2005.

B. Even if the Instructions to Form 499-A are Deemed Interpretative Rules and Thus Immune from the APA's Notice and Comment Requirements, the Instructions are Still Invalid Because They Conflict with the Commission's USF Regulations That Impose USF Contributions Only On End User Revenues.

If the instructions to Form 499-A are deemed to be merely "interpretative" rules rather than "substantive" rules, in which case notice and comment are not required, the Form 499-A's instructions are still invalid because they clearly conflict with the Commission's regulations

providing that USF contributions will be assessed on the basis of end user revenues.³⁶ In fact, The FCC Form 499-A essentially admits that it is only interpretative, and thus without binding force. The instructions to Form 499-A contains various disclaimers that the Commission's regulations and orders take precedence over the Form. For example, the instructions state that "[t]hese instructions contain an explanation of which carriers must contribute to particular mechanisms... but filers should consult the specific rules that govern contributions for each of the mechanisms."³⁷ The instructions further state that "[f]ilers should consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms."³⁸ Compared to the Commission's rules, the instructions to FCC Form 499-A expand the definition of end user revenue. Such disclaimers are an admission that instructions are inferior and subject to the Commission's regulations and precedent.

In the *First Report and Order*, and in its Part 54 regulations governing USF, the Commission did not specifically define "end user," thus relying on the ordinary and customary meaning. However, as outlined above, it is clear from the *First Report and Order* that the Commission made a distinct delineation between end user revenues and wholesaler revenue in the contribution methodology for the USF. Despite the clear and unambiguous language in the governing regulation regarding the term "end user", the instructions to Form 499-A unlawfully redefine the USF contribution base to include revenue from any customer who is not a contributor to the USF, including someone who is, by common parlance, a reseller or

³⁶ 47 C.F.R. § 54.706(b).

³⁷ Instructions to Form 499-A at 4.

³⁸ *Id.* at 30, n.38.

distributor.³⁹ The instruction's definition of "end user" is at odds with the common understanding of the definition of end user. Applying the common meaning of "end user" to IDT's prepaid calling card and carrier's carrier sales results in a determination that all such sales made to distributors or resellers are not made to "end users."

In reviewing such rules, a court will defer to an agency's interpretation of its ambiguous regulation,⁴⁰ but will not defer to such interpretation if the regulation is unambiguous.⁴¹ There is nothing ambiguous about the definition of "end user," as demonstrated by the Commission's consideration in the *First Report and Order* that USF contributions should not be based on total sales, but rather, based only on end user sales. Indeed, in so doing, the Commission consciously and directly considered the definition of end user to be so unambiguous, that nowhere in either the *First Report and Order* or in subsequent decisions, did the Commission ever specifically address the definition of "end user."

This failure to define "end user" is understandable, as the meaning cannot reasonably be understood to refer to anything other than the actual final purchaser and user of a telecommunications service. In fact, within the same Form 499-A instructions, prepaid calling providers are instructed to report revenue based on the amount actually paid by the consumer (typically the face value of the card), and not, by contrast, the price paid by the distributor or the

³⁹ Form 499-A, Instructions at 19. Originally, this instruction appeared in the predecessor Form 457. See, FCC Public Notice (rel. Aug. 4, 1997), 62 Fed. Reg. 43165 (Aug. 12, 1997) (announcing OMB approval of the Form).

⁴⁰ *Auer v. Robbins*, 519 U.S. 452, 461 (1997); see also *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413-14 (1945).

⁴¹ *Christensen v. Harris County*, 529 U.S. 576, 588 (2000). The Supreme Court held that *Auer* deference is warranted only when the language of the regulation is ambiguous, otherwise to defer to the agency's interpretation would be to permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation. See *id.*

retail outlet (priced at a wholesale discount).⁴² This conflict within the same instructions indicates the absurdity of defining a distributor as an end user for USF reporting and contribution purposes. If the distributor was truly the end user, then the reporting would be done based on the revenue received from the distributor, not the ultimate price paid by the consumer. This anomaly can be easily rectified by simply applying the proper, common sense definition of end user as contemplated in the Commission's regulations and the underlying Orders rather than the instructions from the Form 499-A.

In contrast to the instructions to FCC Form 499-A, the Commission's regulations support the argument that revenues from the sale of prepaid calling cards to distributors and other wholesalers are not end user revenues and should not be included in the base used to compute universal service contributions. Therefore, USAC's Audit Report with respect to IDT's wholesale revenue, both prepaid calling card and other carrier's carrier revenue, should be reversed and returned to the appropriate wholesale lines of IDT's Form 499-A.

IV. CONCLUSION

In light of the foregoing reasons, IDT respectfully requests that the Commission reverse USAC's findings 1 and 5 of the USAC Audit Report regarding wholesale prepaid calling card

⁴² Form 499-A, Instructions at 22. The instructions for Line 411 specifically state that "[g]ross billed revenues should represent the amounts actually paid by customers and not the amounts paid by distributors or retailers,..."

revenue, carrier's carrier revenue and USF contributions based on end user revenues and its recommendation that IDT re-file its 2003, 2004, and 2005 Form 499-A.

Respectfully submitted,



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Counsel for IDT CORPORATION

Dated: April 10, 2006

EXHIBIT 1

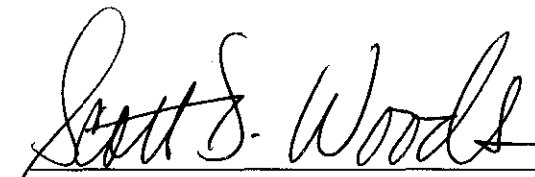
USAC Audit Report

CONFIDENTIAL & PROPRIETARY

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April 2006, a copy of the foregoing REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY IDT CORPORATION in CC Docket 96-45, was served via U.S. Mail to the following:

David Capozzi,
Acting General Counsel
Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036



Scott D. Woods